

News and Features

Right-to-die bills defeated in more than 28 states

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When the people of Oregon voted to legalize physician-assisted suicide a year ago, the executive director of the advocacy group Compassion in Dying hailed it as a turning point for the death with dignity movement. But the overwhelming defeat of similar initiatives in other states has stopped those hopes dead in their tracks. Although bills to legalize physician-assisted suicide have been debated in California, New York, Michigan, Arizona, Connecticut, Louisiana, New Hampshire, and Florida, none has passed, nor are any expected to.

In Michigan, voters recently rejected Proposal B, a measure for assisted suicide, by a margin of 71% to 29%. Under this proposal, Michigan residents or, in some situations, their out-of-state relatives would be eligible for assisted suicide if confirmed by one psychiatrist to be mentally competent and by two physicians to be terminally ill with 6 months or less to live. After meeting these criteria, these individuals would be allowed a lethal dose of medication to end their lives. Proponents of Proposal B contend that 30 groups opposed the measure, including the Catholic Conference, Right to Life, the state medical society, the state hospice association, and a pressure group for disabled people. The bill, they argued, was defeated by these well-funded special interest groups and not because of a lack of popular support.

Similarly, in California, a bill to allow physician-assisted suicide (AB 1592) was jammed through a state assembly appropriations committee only to be tabled once it reached the assembly floor. The bill—modeled after an Oregon law that allows a physician to prescribe a lethal dose of medication to a terminally ill patient—will not be voted on until next year. Meanwhile, in New York, some members of the New York Task Force on Life and the Law regarded assisted sui-



Gregory Dugan of Washington protests outside the Supreme Court against physician-assisted suicide.

cide as ethically acceptable in exceptional cases, yet all 24 task force members concluded that “constructing an ideal or ‘good’ case is not sufficient for public policy if it does not reflect medical practice.” Many task force members were deeply moved by some patients’ suffering, but they felt that giving publicly sanctioned suicide assistance to those patients endangered a much larger number of vulnerable people. In Arizona, a similar bill proposed by Peter Goudinoff (D-Tucson), then the state’s senate majority leader, would have legalized doctor-assisted suicide. The bill was defeated in the state legislature 3 years ago.

During the past 2 years, in more than 28 states, no bill proposing the legalization of physician-assisted suicide has been successful, according to the National Conference of State Legislatures. Three states—Michigan, South Carolina, and Virginia—even took the extra step of passing new bans on the practice. In total, at least 45 states have outlawed physician-assisted suicide.

Oregon appears to be the striking exception to this trend, having passed a bill that allows physician-prescribed lethal medication for terminally ill patients. Opponents of the bill argued that it passed overwhelmingly due to voter resentment, since the state legislature forced a second vote on the issue after it had already been approved by a 51%

to 49% margin—the first time in state history the legislature tried to repeal a voter-passed initiative. Last year in Oregon, 15 people used their right to physician-assisted suicide.

There are signs, however, that the tide against assisted suicide measures may have reached an ebb. The Supreme Court ruled in 1997 that people do not have the constitutional right to suicide or dying but left the question of outlawing physician-assisted suicide to the individual states. A class-action federal lawsuit filed in Detroit on 19 March 1999, if successful, would establish federal protection of the constitutional right to be free from unbearable and irremediable suffering due to a medical condition. Such a right would allow physician-assisted suicide and would protect doctors from prosecution.

“The fact that 45 states have banned physician-assisted suicide does not necessarily represent an accurate barometer of public sentiment,” said University of Pennsylvania bioethics professor Glenn McGee. “Public opinion polls are subject to sudden changes when it comes to this issue.”

Most of the bills proposed to date have been modeled after Oregon’s successful initiative. To qualify under the California measure, for example, according to Dion Aroner (D-Berkeley), the state assembly woman who

proposed the measure on behalf of Americans for Death with Dignity, a sick person must have received a medical diagnosis saying that he or she is within 6 months of death, must voluntarily request assistance in dying, and must enlist two doctors to review the case. In addition, the California measure requires that a request for assistance be made twice, at least once in writing. If doctors question the competence of a patient, they can seek a psychiatric examination.

The high profile of these measures may produce general benefits for terminally ill patients. "Time after time, actions to ban assisted suicide or to reaffirm existing bans have been followed by advances and improvements in pain control," said Richard Doerflinger, Associate Director for Policy Development for the National Conference of Catholic Bishops. "When Rhode Island considered a new ban on assisted suicide in 1996, the state medical society objected

that such a ban would have an adverse effect on physicians' willingness to use drugs like morphine for aggressive pain control. But, in fact, the opposite happened. In the year following enactment of the ban, according to official figures from the Drug Enforcement Agency, Rhode Island more than doubled its per capita use of morphine for pain control, rising from 46th among the states to 19th in morphine use."

Euthanasia allowed in Dutch patient with dementia

see also p.268

Tony Sheldon, Utrecht

A physician in the Netherlands has escaped prosecution after helping an elderly patient with vascular dementia to die. In the first public case involving a patient with dementia, the patient was considered to have been competent to request assisted suicide, and the procedure was judged to be medically and legally sound.

The facts were reported in a case history in a Dutch medical journal (*Nederlands Tijdschrift Voor Geneeskunde* 1999;143:17). Dutch law states that doctors can avoid prosecution for assisted suicide only if their patient has persistently made an informed and voluntary request and is suffering unbearably and hopelessly. The patient in this case was considered "ill enough not to want to go on anymore, but...not so demented that he could not decide."

A complex protocol, the first of its kind in the Netherlands, was set up by the hospital involved, the Twents Psychiatric Hospital, to consider the patient's request. The case involved a 71-year-old man who had been diagnosed 4 years ago as having cerebral atrophy and multi-infarct dementia. Magnetic resonance imaging confirmed that his condition was deteriorating. He



Emile van Eeghen of Maine, a supporter of physician-assisted suicide whose father died from this method in the Netherlands

asked his doctor to help him to die because he did not want to cope with a further deterioration in his condition.

The patient's case was assessed by the hospital's chief psychiatrist, a committee of independent professionals, and an external psychiatrist. Four months after assessment, the patient died at home after drinking a high-dose solution of barbiturate given to him by his doctor. The public prosecutor approved the procedure after consultation with the national forum of procurators general.

The case has raised fears that it brings euthanasia for elderly patients with dementia a step closer. The Alzheimer's Foundation in the Netherlands warned: "Dementia itself could never be a reason for assisted

suicide because the patient is incapable of making an informed request."

The doctor involved in the case defended her actions, writing in the journal that she opposes euthanasia and assisted suicide for patients who are unable to express their will, and she agrees that most patients with dementia cannot. In this case, however, her patient was lucid at all times and able to understand the consequences of his request.

Medical director of the Royal Dutch Medical Association, Rob Dillmann, said that if a patient was in the early stages of dementia with an untreatable progressive neurological disease, but still clearly competent, then there was the possibility that physician-assisted suicide could be appropriate.